

Opening Statement of the Chairman Fred Upton
Subcommittee on Commerce, Manufacturing, and Trade
Legislative Hearing on 17 FTC Bills
May 24, 2016

(As Prepared for Delivery)

Across the House of Representatives, committees are constantly addressing new technologies. And as part of the Majority Leader's Innovation Initiative, we are collectively taking a fresh look at how technology interacts with regulation, how we can modernize federal agencies for the 21st century, and promote jobs and the economy.

This subcommittee in particular has taken a deliberative approach through the Disrupter Series by examining the continual unsettling of industries and governmental roles caused by novel technologies and business models.

The task is different depending on the nature of the agencies and industries affected. In the case of the FTC, the agency is a technology-forward and creative agency. So our work is more focused on future-proofing the commission and keeping it focused on after the fact enforcement.

This may mean prompting more input from economists and more participation at the commissioner level. It may also mean making sure that if the concern is only possible harms, we are also examining possible benefits and treading carefully.

Needed certainty requires that everyone understand both the legal theories that do *and* those that do not give rise to an enforcement action. We are looking at a combination of these approaches with our process and transparency reform bills today. However, sometimes specific problems do develop that must also be addressed. For example, hackers have taken advantage of ticket sellers for too long, robbing consumers of an opportunity to see their favorite musical acts or sports teams.

It is hard enough to get a ticket for Hamilton or a postseason Cubs game. It is time to give the FTC some additional tools and put a federal enforcer on the beat in this area.

In 1994, when the most recent statutory changes were made to the FTC's general Section 5 authority, spirited disagreement yielded a solid compromise. Where the Senate sought to ban all advertising rules under FTC "unfairness" authority, the House disagreed and the compromise yielded the statutory "unfairness" balancing test.

Codifying this test was a positive advancement and over twenty years later, we seek to build on it. As the FTC encounters new technologies and is incentivized to prevent new harms to further its consumer protection purpose, there must be countervailing incentives not to thwart innovation. It cannot be overstated that hindering innovation is often the same thing as hindering consumer welfare.

Many of the bills we unveiled are a step forward and an invitation to begin the real work of reconciling differences. We commit to honest and open inquiry with the commission, experts, and industry and to consider all options to achieve our shared goals of protecting consumers, competition, and innovation. These thoughtful solutions that modernize the FTC for the 21st century and put innovation first will greatly benefit folks in Michigan and across the country.

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